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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT SEATTLE

8 VIRTRU CORPORATION,

9 Plaintiff,

10 v.

11 MICROSOFT CORPORATION,

12 Defendant.

CASE NO. 2:23-cv-872

ORDER DENYING DEFENDANT'S
MOTION TO CONTINUE

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14 This matter comes before the Court on Defendant Microsoft Corporation's
15 motion to continue the trial date and related deadlines. Dkt. No. 200. Plaintiff
16 Virtru Corporation opposes the requested continuance. Dkt. No. 204. Because
17 Microsoft fails to show good cause, the Court DENIES its motion to continue.

18 On May 31, 2024, the Court set trial for May 7, 2025. Dkt. No. 163. The
19 Court's order instructed counsel to email its Courtroom Deputy within ten days if
20 this date created an irreconcilable conflict. *Id.* at 2–3. On June 10, 2024, Virtru's
21 counsel told the Court it had a potentially irreconcilable conflict with the scheduled
22 trial date. Dkt. No. 164. The Court ordered the parties to propose a new trial date,
23 and on June 20, 2024, the Court set trial for June 16, 2025. Dkt. Nos. 164; 166.

1 Microsoft presents two scheduling conflicts as the basis for its motion to
2 continue. First, Microsoft's co-lead counsel Betty Chen is also lead counsel in a case
3 pending before the United States International Trade Commission (ITC) with the
4 hearing set for June 30, 2025, a few days after trial here would finish. Dkt. No. 202
5 ¶¶ 2–3. The ITC issued its order setting the hearing date on September 3, 2024. *Id.*
6 ¶ 4. Second, Microsoft's other co-lead counsel Ahmed Davis is also lead counsel in a
7 patent case pending in the District Court of Maryland. Dkt. No. 201 ¶ 2. The
8 Maryland District Court issued a scheduling order on December 20, 2024, setting
9 trial to go through June 13, 2025—one business day before the trial here is set to
10 begin. *Id.* ¶¶ 3–4.

11 A scheduling order may be modified only with the Court's leave, for good
12 cause. Fed. R. Civ. P. 16(b)(4). "Rule 16(b)'s 'good cause' standard primarily
13 considers the diligence of the party seeking the amendment." *Johnson v. Mammoth*
14 *Recreations, Inc.*, 975 F.2d 604, 609 (9th Cir. 1992). As a result, courts modify
15 scheduling orders "if [they] cannot reasonably be met despite the diligence of the
16 party seeking the extension." Fed. R. Civ. P. 16 advisory committee's notes (1983
17 amendment).

18 Microsoft argues it exercised diligence in pursuing the requested continuance.
19 Dkt. No. 200 at 6. The Court disagrees. Both conflicts arose after the Court
20 scheduled this trial. Although Microsoft's counsel states that he advised the
21 Maryland District Court of this trial date, but he does not clarify whether he has
22 moved for a continuance there. *See* Dkt. No. 201 ¶ 3. Here, the Court set trial six
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1 months before the district court in Maryland. It does not make sense to grant a
2 continuance of a long-standing trial date to accommodate one set so much later.

3 Microsoft argues it will be prejudiced because its lead counsel will not be able
4 to adequately prepare for trial. Dkt. No. 200 at 9–10. But Microsoft’s argument
5 ignores the prejudice Virtru will face because of further delay and the multiple
6 attorneys appearing for Microsoft already signed on to this matter.

7 Microsoft also argues that a continuance will allow more time for mediation
8 and for the Court to resolve the pending dispositive motions. *Id.* at 7–8. But since
9 making this argument Microsoft and Virtru scheduled and attended a mediation on
10 April 3, 2025. Dkt. No. 279. Further, trial is over two months away and the Court is
11 on schedule to adjudicate the pending dispositive motion and motions to exclude
12 experts promptly.

13 Accordingly, the Court DENIES Microsoft’s motion to continue. Dkt. No. 200.

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15 Dated this 9th day of April, 2025.

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18 Jamal N. Whitehead
19 United States District Judge
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